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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,783	07/06/2001	Paul Henrichs	Mo-6410/LeA 34,193	7684

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EXAMINER

CHANG, VICTOR S

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/900,783

Applicant(s)

HENRICHES ET AL.

Examiner

Victor S Chang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3 and 6-14.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: PTO-892

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300

1700



NOTE

1. Applicants' argument that "Gilman (WO 94/14587) discloses spraying the reactive polymers onto a solid support/substrate, e.g., a mold, and then removing the formed layers from the solid support/substrate" (Remarks, pages 5-6, bridging paragraph) is not persuasive. The Examiner notes that WO '587 expressly teaches that the solid support is generally a mold, but may be any solid support that allows the first layer to harden in a manner suitable for a particular application; WO '587 further teaches that the solid support can be other suitable type ... used for other methods in the art (page 6, lines 6-12). As such, since both WO '587 and admitted prior art (Benz et al., EP 0 589 343) are in the same field of endeavor, i.e., in the same art of making a multilayered structure by spraying method, the Examiner reiterates (see Paper No. 9, page 2, bottom paragraph) that it would have been obvious to one of ordinary skill in the art to make a multilayered structure as the instantly claimed invention, as taught by the combined teachings of WO '587 and the admitted prior art, motivated by the desire to improve the durability and to reduce the production cost.

2. With respect to Applicants' argument that EP '343 does not disclose "an underlying layer of PU foam that is itself sandwiched or embedded in the following sequence of layers: a solid thermosetting PU layer; a crosslinked PU elastomer layer; the PU foam layer; and a solid thermosetting PU layer" (Remarks, page 6, second full paragraph), the Examiner reiterates (see Paper No. 7, page 5) that WO '587 expressly teaches that in a preferred embodiment, the resin is an elastomer (page 4, second

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complete paragraph). As such, clearly the thermosetting PU layer of WO '787 is also elastomeric, i.e., the separate "crosslinked elastomer layer" appears semantic and is clearly inherently encompassed by the teachings of WO '787, in particular, in a multilayered structure formed by a spray coating method.

3. With respect to Applicants' argument that the English translation of EP '343 includes a tie or adhesive layer of an uncrosslinked flexible polymer between the PMMA and the reinforcing layer of rigid crosslinked polyurethane (Remarks, page 6, bottom paragraph), the Examiner notes that: First, Applicants fail to provide a copy of the English translation, so it is unclear whether the tie layer is a necessary component in the multilayered structure. Second, it appears that both the English Abstract and Applicants' admission of EP '343 appear to teach that the tie layer is an optional layer to improve the adhesion. It should be noted that a known or obvious article does not become patentable simply because it has been described as somewhat inferior to some other product for the same use. See MPEP § 2123.

4. With respect to Applicants' argument that "neither Gilman nor Benz et al. disclose, teach or suggest the improved physical properties (e.g., impact resistance) that are provided by the multilayered articles of Applicants' present claims" (Remarks, page 7, second paragraph), the Examiner reiterates that WO '587 expressly teaches ~~the~~ forming a multilayered structure by spraying improve^s the durability and to reduce the production cost, as set forth above. Further, it should be noted that the "impact resistance" property is absent from any of the claims.

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5. With respect to Applicants' argument that the rejection appears to be an impermissible hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In particular, it is noted both WO '587 and EP '343 are in the same filed of endeavor, i.e., in the same art of making a multilayered structure by spraying method, as set forth above. The Examiner asserts that the combination of the prior art is proper.